conflict of interest

The massive growth in the manufacture of telecoms equipment has had a spin-off for one of the most controversial topics in the mining industry – conflict minerals. By KERRY DIMMER

Colombo-tantalite, aka coltan, is a small but crucial component used in the manufacture of mobile devices and computers. According to Richard Burt, president of the Tantalum-Niobium International Study Centre (TIC) in Belgium, 15–20% of the world's reserves of this mineral are sourced from the DRC, a country racked by decades of poverty and civil war. It is common knowledge that DRC warlords, intent on acquiring wealth that would build militias to gain political advantage, have funded their campaigns by selling this raw mineral.

Combined with a dysfunctional government unable to implement effective national security, this has resulted in an estimated 2 million artisanal mineworkers – including 400 000 women and 800 000 children – working and living in unsafe and unsanitary environments, earning as little as US$4 a day.

In 2010 the US government passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which put pressure on American electronics companies to ensure their products were not sourced from the killing fields of the DRC.

To be clear, however, Section 1502 of the Dodd-Frank Act does not explicitly ban the trade of conflict minerals, it simply requires US companies to report their purchase and use. Under the act, to be able to describe products as conflict-free, US manufacturers require that their suppliant smelters establish the source and chain of custody of minerals through a 'bagging and tagging' system.

In response to the law, the Congolese government stopped all artisanal mineral exploitation in its highest producing provinces. This affected the extraction of products that were now considered conflict minerals such as coltan, cassiterite and wolframite.

The intention of the ban was honourable. It would allow the sector time to formalise the industry, control could be re-established, violence would be curbed and revenues could be redirected to the economic health of the nation. However, the ban did not account for stockpiles in the hands of the warlords and it had minimal effect since the trading chain was almost completely fraudulent and impossible to interrupt.

So while the suspension barely touched the warlords, it deeply affected the artisanal miners. Overall, the suspension was a blessing and a curse, but in its favour it served to spark interest by international investors who could now consider operations in a more stable environment.

When the suspension was lifted by the DRC government in March 2011, what was clearly evident was that the US Securities and Exchange Commission (SEC), to which US companies have to declare trade in conflict minerals, needed to clarify exactly what it considers as 'conflict trade' since Section 1502 has been exposed as being open to much interpretation.

At the time of writing, the SEC was taking commentary from interested parties before publishing regulations in respect to Section 1502. Reuben de Koning from the Stockholm International Peace Research Institute and a member of the UN Group of Experts on the DRC, shared with *Mining Decisions* a copy of the fax that the group sent to the SEC's chairman, Mary Schapiro.

In it, the UN group makes clear that its investigations in the DRC shows 'that private-sector purchasing power and due diligence implementation is reducing conflict financing, promoting good governance in the mining sector, and preserving access to international markets for impoverished artisanal miners'.

The group is adamant that Dodd-Frank is working. All that is now required is a correct calibration of the SEC regulations with the UN and the Organisation for Economic Co-operation and Development's (OECD) due diligence guidelines concerning disclosure so that trade can keep flowing, but in ways that lead to improvements.

In an earlier letter to the SEC, the group, the OECD and the International Conference on the Great Lakes Region had already recommended that the SEC regulations should not require a 'DRC conflict free' disclosure where

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In South Kivu, DRC, people risk their lives to earn a meagre living by mining cassiterite and coltan

SPECIAL REPORT

Coltan being stored in a shipping container at a mine in North Kivu before being shipped overseas

purchasers are in the process of implementing a mitigation strategy to eliminate illegal involvement of the state's armed forces. This letter was signed by local and international NGOs, key industry associations and government representatives from the region.

The SEC also received a letter from the vice-president of the Mining Chamber of the DRC, John Kanyoni, who is seriously concerned that gross misinterpretation has led to a de facto embargo on all DRC minerals, pointing out that it jeopardises the efforts made by the local industry to formalise. 'We can confirm today [28 October 2010], that as expected there is increased smuggling activity, a very big decrease in revenue of the government of the DRC, and no more formal business in the Kivu district!'

The de facto embargo is also a major concern of Kay Nimmo, manager of Sustainability and Regulatory Affairs at Tin Markets, Technology and Sustainability. In her letter to the SEC she highlights that the current definition in Section 1502 for conflict minerals includes derivatives, such as tin, tantalum and tungsten, commonly referred to as the 3Ts.

After the suspension was lifted, Bloomberg reported that sales of tin ore from the North Kivu province fell more than 90% in one month. This clearly shows how effective the Dodd-Frank effect has been, albeit to the detriment of other mineral mining.

While the SEC deliberates its amendments to Section 1502 and until they are published, the situation of the DRC's informal mineral mining operations remains in limbo. Kanyoni says: 'Compared to previous years there are improvements. Most artisanal mining is no longer under military control, although we do still have a few problems in some of the remote locations.'

Georges Bokondu, bureau chief of the Southern Africa Resource Watch, is keeping a close eye on the situation. 'There are regional initiatives to stop illegal trade, and the law of the country is set up to encourage the creation of co-operatives, but given that the mining provinces' budgets are diminished as a result of the suspension, the international community needs to step in.'

The solution, present and future, appears to be the formation of mining co-operatives, or collectives, which will include having everyone in the mineral supply chain register their activity – an incredibly long process that will require the Congolese to take responsibility. After all, a foreign trade policy like Dodd-Frank is not going to solve the internal problems of politics and war.

Such registration and subsequent validation of mine sites promotes transparency in the trade of DRC minerals and will go a long way to ease the conscience of the end user. It will also play an enormous role in curbing child labour practices and improve the safety of the miners. In the meantime, artisanal mining continues in the DRC. Any enforcement measures put in place now are gearing up to, inter alia, meet future Dodd-Frank requirements.

It is unfair to lay at the SEC's door the responsibility to promote peace in the DRC – that lies in the hands of the government and its people. No matter who enforces what, the artisanal miners' best interests are going to be subjugated to higher causes one way or another, be that the peacemakers, the warlords or the government. MD

SOLUTIONS FOR HOPE

The AVX Corporation is a worldwide manufacturer and supplier of electronic components, supplying among other things, tantalum capacitors. Its vested interest in how to source conflict-free minerals from the DRC has culminated in a programme called Solutions for Hope.

Essentially a pilot project, the model is based on the principle of a 'closed pipe system' whereby mined tantalite, from a single source in the DRC's Katanga province, can be traced along a formulated supply chain to the end user.

The chain starts with a diggers' co-operative that supplies raw tantalum to a mine owner or trader who then sells it to a toll processor who in turn will provide AVX with the product required by an original equipment manufacturer. Richard Burt from the Tantalum-Niobium International Study Centre says that this closed pipe lessens the number of hands through which material passes resulting in a reduction of the risk of 'leakage' out of, or into, the closed pipe system.

'There is little doubt that this model will minimise risk and, indeed, appropriate third party site assessment has been carried out. It should be the model for the future. Not only is it a win-win situation, the diggers have a more secure and higher income by being part of a co-operative translating into a greater voice with regard to safety, for example.

'The government also receives its fair share of taxes, advocacy groups can sign-off on a transparent process, and finally customers are assured of buying conflict-free products.'